

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 346

Short Title: Governing Bodies/Collect Unpaid Judgments. (Public)

Sponsors: Representatives Faircloth, Stam, Hardister, and Glazier (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Government, if favorable, Finance.

March 20, 2013

A BILL TO BE ENTITLED

AN ACT AUTHORIZING COUNTIES AND CITIES TO WITHHOLD COMPENSATION OF A MEMBER OF THE GOVERNING BODY IF THE COUNTY OR CITY HAS BEEN GRANTED A MONEY JUDGMENT AGAINST THE MEMBER AND THE JUDGMENT HAS NOT BEEN PAID.

The General Assembly of North Carolina enacts:

**SECTION 1.** Part 1 of Article 5 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

**"§ 160A-64.1. Withholding compensation; money judgment against council member.**

(a) A city that obtains a final judgment awarding monetary damages against an elected or appointed member of the city council, either individually or jointly, may enforce the judgment by withholding nonexempt earnings from the member's compensation set under G.S. 160A-64. For purposes of this section, the following definitions apply:

- (1) Disposable income. – The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise which remains after the deduction of any amounts required by law to be withheld.
- (2) Nonexempt earnings. – That portion of the disposable earnings owed to a city judgment creditor that are not exempt under G.S. 1-362.

(b) At any time following entry of the final judgment, the city's finance officer shall give notice to the member that his or her nonexempt earnings will be withheld and that the member has the right to submit an objection as provided in subsection (c) of this section. The notice shall be served upon the member either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing.

(c) Not later than five days after the notice is served, the member shall submit, in writing, to the finance officer the member's objection to the withholding of compensation. Not later than 10 days after the notice of objection is submitted, the finance officer shall hold a hearing to determine the validity of the member's objection. The member may be represented by counsel at the hearing. The finance officer shall make a determination as to the validity of the member's objection not later than five days after the hearing. If the finance officer determines that the objection is with merit, the finance officer shall notify the city council, which shall at its next regular meeting, in open session, consider the matter and decide how to



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1 proceed with the withholding. If the finance officer determines that the objection is without  
2 merit, the finance officer shall, in writing, do the following: (i) notify the member that his or  
3 her compensation will be withheld as authorized in this section; and (ii) direct the officer  
4 charged with making up the payrolls of the city to withhold nonexempt earnings from the  
5 member's compensation. The withholding of compensation shall begin, on a pro rata basis, the  
6 pay period immediately following the notice to the payroll officer, but in no event shall it begin  
7 later than 30 days after the finance officer gives notice to the member under subsection (b) of  
8 this section. The withholding shall continue until either the underlying judgment has been  
9 satisfied in full or the member is no longer a member of the city council. Compensation shall  
10 resume on a pro rata basis when the judgment has been paid in full. The finance officer shall  
11 not be liable to any person for any actions taken pursuant to the provisions of this section.

12 (d) The member may appeal the decision of the finance director to withhold  
13 compensation to the city council. The request for a hearing before the city council shall be in  
14 writing, and shall be submitted to the city clerk not later than five days after the finance officer  
15 notifies the member that his or her compensation will be withheld. The city council shall  
16 schedule the hearing, which shall be held in open session, at the next regular meeting of the  
17 council immediately following the member's request for an appeal.

18 (e) The provisions of this section do not preclude the city from collecting the unpaid  
19 money judgment using any other means authorized by law. The provisions of this section do  
20 not apply to ad valorem taxes."

21 **SECTION 2.** Part 1 of Article 4 of Chapter 153A of the General Statutes is  
22 amended by adding a new section to read as follows:

23 **"§ 153A-30. Withholding compensation; money judgment against board member.**

24 (a) A county that obtains a final judgment awarding monetary damages against an  
25 elected or appointed member of the board of commissioners, either individually or jointly, may  
26 enforce the judgment by withholding nonexempt earnings from the member's compensation set  
27 under G.S. 153-28. For purposes of this section, the following definitions apply:

28 (1) Disposable income. – The part of the compensation paid or payable for  
29 personal services, whether denominated as wages, salary, commission,  
30 bonus, or otherwise which remains after the deduction of any amounts  
31 required by law to be withheld.

32 (2) Nonexempt earnings. – That portion of the disposable earnings owed to a  
33 city judgment creditor that are not exempt under G.S. 1-362.

34 (b) At any time following entry of the final judgment, the county's finance officer shall  
35 give notice to the member that his or her nonexempt earnings will be withheld and that the  
36 member has the right to submit an objection as provided in subsection (c) of this section. The  
37 notice shall be served upon the member either personally or by registered or certified mail.  
38 When service is made by registered or certified mail, a copy of the notice may also be sent by  
39 regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed  
40 or refused, but the regular mail is not returned by the post office within 10 days after the  
41 mailing.

42 (c) Not later than five days after the notice is served, the member shall submit, in  
43 writing, to the finance officer the member's objection to the withholding of compensation. Not  
44 later than 10 days after the notice of objection is submitted, the finance officer shall hold a  
45 hearing to determine the validity of the member's objection. The member may be represented  
46 by counsel at the hearing. The finance officer shall make a determination as to the validity of  
47 the member's objection not later than five days after the hearing. If the finance officer  
48 determines that the objection is with merit, the finance officer shall notify the board of  
49 commissioners which shall, at its next regular meeting, in open session, consider the matter and  
50 decide how to proceed with the withholding. If the finance officer determines that the objection  
51 is without merit, the finance officer shall, in writing, do the following: (i) notify the member

1 that his or her compensation will be withheld as authorized in this section; and (ii) direct the  
2 officer charged with making up the payrolls of the county to withhold nonexempt earnings  
3 from the member's compensation. The withholding of compensation shall begin, on a pro rata  
4 basis, the pay period immediately following the notice to the payroll officer, but in no event  
5 shall it begin later than 30 days after the finance officer gives notice to the member under  
6 subsection (b) of this section. The withholding shall continue until either the underlying  
7 judgment has been satisfied in full or the member is no longer a member of the board of  
8 commissioners. Compensation shall resume on a pro rata basis when the judgment has been  
9 paid in full. The finance officer shall not be liable to any person for any actions taken pursuant  
10 to the provisions of this section.

11 (d) The member may appeal the decision of the finance director to withhold  
12 compensation to the board of commissioners. The request for a hearing before the board shall  
13 be in writing, and shall be submitted to the clerk to the board not later than five days after the  
14 finance officer notifies the member that his or her compensation will be withheld. The board of  
15 commissioners shall schedule the hearing, which shall be held in open session, at the next  
16 regular meeting of the council immediately following the member's request for an appeal.

17 (e) The provisions of this section do not preclude the county from collecting the unpaid  
18 money judgment using any other means authorized by law. The provisions of this section do  
19 not apply to ad valorem taxes."

20 **SECTION 3.** This act becomes effective January 1, 2014, and applies to money  
21 judgments that are unsatisfied or entered on or after that date.